**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.3628 OF 2006**
**IN**
**FIRST APPEAL NO.1388 OF 2003**
**IN**
**B.C.C.C.SUIT NO.5163 OF 1999**

1A. Shanti Budhiya Vesta Patel
1B. Savita Ashok Patel
1C. Gulab Budhiya Vesta Patel
1D. Ramu Budhiya Vesta Patel

All legal heirs of Late Budhiya Vesta Patel, residing at Survey No.108, Hissa No.1 & 2 C.T.S.No.169, Opp.Parsi Tabela, Ram Mandir Road, Goregaon(W), Mumbai - 062. ..Applicants (Ori.Appellants)

**Versus**

1. Nirmala Jayprakash Tiwari
2. Vinod Jayprakash Tiwari
3. Vishal Jayprakash Tiwari
4. Roshan Jayprakash Tiwari
5. Prakash Ramkishore Tiwari
6. Siddharth S.Tiwari

..Respondents (Ori.Defendant Nos.1 to 6 to Suit.)

Nos.1 to 6 residing at Tiwari Bungalow, Ram Mandir Road, Goregaon(W), Mumbai - 062.

7. Leenan Anant Tambe of Bombay, Indian Inhabitant Residing at 34, Mangal Prasad, Sir Bhalchandra Road, Dadar, Mumbai - 014. ..Respondent (Ori.Defendant No.7)

Mr.P.K.Dhakephalkar i/b.M/s.J.S.Anand & Associates for the Applicants.

Mr.N.H.Seervai, Senior Advocate, i/b.Girish Godbole for Respondent No.7.

**WITH**

**CIVIL APPLICATION NO.3629 OF 2006**
**IN**
**FIRST APPEAL NO.1389 OF 2003**
**IN**
**B.C.C.C.SUIT NO.5163 OF 1999**

1. Shanti Budhiya Vesta Patel
2. Savita Ashok Patel
3. Gulab Budhiya Vesta Patel
4. Ramu Budhiya Vesta Patel

All legal heirs of Late Budhiya Vesta
Patel, residing at Survey No.108,
Hissa No.1 & 2 C.T.S.No.169, Opp.Parsi
Tabela, Ram Mandir Road, Goregaon(W),
Mumbai - 062. ..Applicants
(Ori.Appellants)

**Versus**

1. Nirmala Jayprakash Tiwari
2. Vinod Jayprakash Tiwari
3. Vishal Jayprakash Tiwari
4. Roshan Jayprakash Tiwari
5. Prakash Ramkishore Tiwari
6. Siddharth S.Tiwari

..Respondents

Nos.1 to 6 residing at Tiwari
Bungalow, Ram Mandir Road,
Goregaon(W), Mumbai - 006. (Ori.Defendant
Nos.2 to 7 to
Counter claim.

7. Leenan Anant Tambe of Bombay,
Indian Inhabitant Residing
at 34, Mangal Prasad,
Sir Bhalchandra Road, Dadar,
Mumbai - 014.

8. M/s.Hitesh Enterprises
A Partnership under Indian
Partnership Act, having its
principal place of business ..Respondent
at 1/7, Vikas Centre, 104, Nos.8 & 9 (Ori.
S.V.Road, Santacruz (W), Plaintiffs to
Mumbai - 400 054. Counter claim)

9. Yusuf Vali Mohd. Bilikhiya
Adult, Indian Inhabitant of
Mumbai, Residing at Room No.6,
Survey No.108, Hissa Nos.1 & 2,
CTS No.169, Opp.Parsi Tabela,
Ram Mandir Road, Goregaon (W),
Mumbai - 400 062. ..Respondent
Nos.9 to 45
10.Ramsajivan Shivdhari Yadav (Ori.Defendant)
Room No.3, Nos.8 to 44 to
Counter Claim.

11.Pherulal Kanai
Room No.4,

12.Bhikaji Aswale
Room No.5,

13.Savita Ashok Patel
Room No.2,

14.Muniraj Rambali Yadav
Room No.7,

15.Ramrachha R.Patel
Room No.8,

16.Lalchand Patel
Room No.9,

17.Yadav Bansu Bali
Room No.10,

18.Chandra Bhushan Ramchharam Yadav
Room No.11,

19.Ram Kripal Yadav
Room No.12,

20.Yadav Ram Akbal
Room No.13,

21.Balkumar Devkinandan Upadhyay,
Room No.14,

22.Surendra Kumar Bachharam Yadav
Room No.15,

23.Yadav Vanshraj Ramnath Yadav
Room No.16,

24.Mangru Ramdular Yadav
Room No.17,

25.Manikraj Ramnaresh Yadav
Room No.18,

26.Shivmurat Ganga Yadav
Room No.19,

27.Subhedar Ganga Yadav
Room No.20,

28.Rambrij Pattu Yadav
Room No.21,

29.Ramrakas Hayadav
Room No.22,

30.Ramdev Sadhoo Yadav,
Room No.23,

31.Samai Ramdev Yadav,
Room No.24,

32.Yadav Lalji Devraj
Room No.25,

33.Sheetal Pandurang Parte
Room No.26,

34.Shivbachan Dasuyadav
Room No.27,

35.Jainat Munshwar
Room No.28,

36.Prashant Jaykaram Yadav
Room No.29,

37.Ramesh Phoolchand Gupta
Room No.30,

38.Ramkewal Bhowal Yadav,
Room No.31,

39.Yadav Avadhnarayan Ramesh Romani
Room No.32,

40.Rajnarag Babunandan Yadav
Room No.33,

41.Acchelal Babunandan Yadav
Room No.34,

42.Tarachand Zabbulal Yadav
Room No.35,

43.Lalji Zilu Yadav
Room No.36,

44.Ramcharan Devnath Yadav
Room No.37,

45.Balla Pahatu Yadav
Room No.38,

Nos.10 to 45, all Adult, Indian
Inhabitants of Mumbai, residing
at their respective Rooms on the
land bearing Survey No.108, Hissa
No.1 & 2, C.T.S.No.169, Opp.Parsi
Tabela, Ram Mandir Road,
Goregaon (W),
Mumbai - 400 062.

Mr.P.K.Dhakephalkar, i/b.M/s.J.S.Anand & Associates
for the Applicants.

Mr.N.H.Seervai, Senior Advocate i/b.Girish Godbole for
Respondent Nos.7 and 8.

Mr.V.A.Thorat, Senior Advocate with Mr.M.Jaykar
a/w.Ms.S.Jaydeo i/b.Khaitan & Jayakar for Respondent
No.9.

**WITH**

**CIVIL APPLICATION NO.3630 OF 2006**
**IN**
**FIRST APPEAL NO.1390 OF 2003**
**IN**
**COUNTER CLAIM NO.11 OF 2002**
**IN**
**B.C.C.C.SUIT NO.5163 OF 1999**

Yusuf Vali Mohd.Bilikhia
adult, Indian Inhabitant of Mumbai,
residing at Room No.6, Survey No.108,
Hissa No.1 & 2, CTS No.169,
Opp.Parsi Tabela, Ram Mandir Road, ..Appellant
Goregaon (West), (Ori.Defendant
Mumbai - 400 062. No.9 in
Counter Claim)

**Versus**

1.Budhiya Vesta Patel ..Respondent
No.1 (since
deceased)

1A.Shanti Budhiya Vesta Patel
1B.Savita Ashok Patel
1C.Gulab Budhiya Vesta Patel
1D.Ramu Budhiya Vesta Patel
..Applicants/

All legal heirs of Late Budhiya Vesta Respondent
Patel, residing at Survey No.108, Nos.1/A to 1D
Hissa No.1 & 2 C.T.S.No.169, Opp.Parsi (legal heirs of
Tabela, Ram Mandir Road, Goregaon(W), Ori.Defendant
Mumbai - 062. No.1.)

2. Nirmala Jayprakash Tiwari
3. Vinod Jayprakash Tiwari
4. Vishal Jayprakash Tiwari
5. Roshan Jayprakash Tiwari
6. Prakash Ramkishore Tiwari
7. Siddharth S.Tiwari
..Respondents

Nos.1 to 7 residing at Tiwari (Ori.Defendant
Bungalow, Ram Mandir Road, Nos.2 to 7 in
Goregaon(W), Mumbai - 006. Counter claim.

8. Leenan Anant Tambe of Bombay,
Indian Inhabitant Residing
at 34, Mangal Prasad,
Sir Bhalchandra Road, Dadar,
Mumbai - 014.

9. M/s.Hitesh Enterprises
A Partnership under Indian
Partnership Act, having its
principal place of business ..Respondent
at 1/7, Vikas Centre, 104, Nos.8 & 9 (Ori.
S.V.Road, Santacruz (W), Plaintiffs to
Mumbai - 400 054. Counter claim)

10.Ramsajivan Shivdhari Yadav
Room No.3, ..Respondent
Nos.9 to 45
11.Pherulal Kanai (Ori.Defendant)
Room No.4, Nos.9 to 45 to
Counter Claim.

12.Bhikaji Aswale
Room No.5,

13.Savita Ashok Patel
Room No.2,

14.Muniraj Rambali Yadav
Room No.7,

15.Ramrachha R.Patel
Room No.8,

16.Lalchand Patel
Room No.9,

17.Yadav Bansu Bali
Room No.10,

18.Chandra Bhushan Ramchharam Yadav
Room No.11,

19.Ram Kripal Yadav
Room No.12,

20.Yadav Ram Akbal
Room No.13,

21.Balkumar Devkinandan Upadhyay,
Room No.14,

22.Surendra Kumar Bachharam Yadav
Room No.15,

23.Yadav Vanshraj Ramnath Yadav
Room No.16,

24.Mangru Ramdular Yadav
Room No.17,

25.Manikraj Ramnaresh Yadav
Room No.18,

26.Shivmurat Ganga Yadav
Room No.19,

27.Subhedar Ganga Yadav
Room No.20,

28.Rambrij Pattu Yadav
Room No.21,

29.Ramrakas Hayadav
Room No.22,

30.Ramdev Sadhoo Yadav,
Room No.23,

31.Samai Ramdev Yadav,
Room No.24,

32.Yadav Lalji Devraj
Room No.25,

33.Sheetal Pandurang Parte
Room No.26,

34.Shivbachan Dasuyadav
Room No.27,

35.Jainat Munshwar
Room No.28,

36.Prashant Jaykaram Yadav
Room No.29,

37.Ramesh Phoolchand Gupta
Room No.30,

38.Ramkewal Bhowal Yadav,
Room No.31,

39.Yadav Avadhnarayan Ramesh Romani
Room No.32,

40.Rajnarag Babunandan Yadav
Room No.33,

41.Acchelal Babunandan Yadav
Room No.34,

42.Tarachand Zabbulal Yadav
Room No.35,

43.Lalji Zilu Yadav
Room No.36,

44.Ramcharan Devnath Yadav
Room No.37,

45.Balla Pahatu Yadav
Room No.38,

Nos.10 to 45, all Adult, Indian
Inhabitants of Mumbai, residing
at their respective Rooms on the
land bearing Survey No.108, Hissa
No.1 & 2, C.T.S.No.169, Opp.Parsi
Tabela, Ram Mandir Road,
Goregaon (W),
Mumbai - 400 062.

Mr.V.A.Thorat, Senior Advocate i/b.Mr.M.V.Jaykar
a/w.Ms.S.Jaydev i/b.M/s.Khaitan & Jayakar & Co.for the
Applicants.

Mr.P.K.Dhakephalkar i/b.M/s.J.S.Anand & Associates for
Respondent Nos.1A to 1D.

Mr.N.H.Seervai, Senior Advocate i/b.Girish Godbole for
Respondent Nos.8 & 9.

**CORAM :- DR.S.RADHAKRISHNAN, J.**

**JUDGMENT RESERVED ON : 31ST AUGUST,2007**

**JUDGMENT DELIVERED ON : 12TH OCTOBER,2007**

**JUDGMENT (PER : DR.S.RADHAKRISHNAN,J.)**

1. By the above three Civil Applications, the Applicants are seeking recall of my order dated 13th June,2006, which was based on Consent-Terms duly signed by all the parties.

2. The brief facts of the case are as follows:

. The original Appellant Budhiya Vesta Patel, now deceased had filed suit before the City Civil Court, Bombay being the Suit No.5163 of 1999 wherein he was the original Plaintiff and the Defendant Nos.1 to 6 and the Defendant Nos.7,8 & 9 and from 10 to 45 were subsequently impleaded as Defendants in the suit. The original Plaintiff the Appellant in the First appeal had also taken out Notice of Motion and which the same was dismissed by the City Civil Court, Mumbai. The Plaintiff herein thereafter filed Appeal from order No.486 of 2001 and wherein Court Receiver was appointed and wherein the Appellant was appointed as the agent of the Court Receiver. By an order dated 19th April,2002, the Court Receiver was directed to depute a representative to the suit land and to determine as to who was in actual physical possession of the suit land submit the report to the Principal Judge of the City Civil Court, Bombay. The Court Receiver was also directed not to dispossess and

disturb any party who is found in possession of the lands in question being suit agricultural land bearing S.No.108, Hissa Nos.1 & 2, C.T.S.No.169, total admeasuring 4 acres 171/2 gunthas i.e.19627 sq.mtrs. situated at Goregaon, Tal.Borivali, Opposite Parsi Tabela, Ram Mandir Road, Goregaon (W), Mumbai.

3. The aforesaid B.C.C.C.Suit No.5163 of 1999 was dismissed by the City Civil Court at Mumbai and the counter claim filed by the Leela Anant Tambe and M/s.Hitesh Enterprises being counter claim No.11 of 2002 was allowed by an Order and Decree of the City Civil Court dated 11th February,2003. The Plaintiff/Appellant herein thereafter filed First Appeal being No.1389 of 2003 and the said Appeal came for hearing on 29th January,2004 and the said Appeal was admitted and interim stay was granted pending the hearing and final disposal of the Appeal with the direction to the parties who were in possession of the suit land that undertaking should be filed in the Court that they would not create any third party right or interest or part with possession of the said premises which were in their possession. The Court Receiver who was appointed in Appeal from order No.478 of 2001, was also discharged.

4. That the Appellant Budhiya Vesta Patel died on 5th December,2004. The said Yusuf Vali Mohd.Milakhiya thereafter had taken out Civil Application No.3180 of 2005 in First Appeal No.1389 of 2003, Civil

Application No.3181 of 2005 in First Appeal No.1390 of 2003 and Civil Application No.992 of 2005 in First Appeal No.1388 of 2003 and wherein Mr.Yusuf Vali Mohd.Bilakhiya had prayed that he be brought on record in all the three Appeals in place of deceased Budhiya Vesta Patel as his legal representative as per Section 202 of the Indian Contract Act. The abovesaid Civil Applications were allowed by me, by order dated 13th June,2006. Pursuant to the above order dated 13th June,2006, the names of the legal heirs of deceased Budhiya Vesta Patel naming them as 1a) Shanti Budhiya Vesta Patel, 1b) Gullu Budhiya Vesta Patel, 1c) Ramu Budhiya Vesta Patel and 1d) Savita Ashok Patel, were incorporated in the above Appeals.

5. Mr.Dhakephalkar on behalf of the Applicants, made the following submissions for recall of the order dated 13th June,2006, based on Consent-Terms, mainly on the ground of fraud played upon this Court;

. Mr.Dhakephalkar submitted that Fraud committed upon the Court can be summarised as follows:-

a. The Consent-Terms showing the names of the legal heirs of the deceased Budhiya Vesta Patel is a fraud upon the Court as the legal heirs have not filed any Civil Application for incorporating their names as legal heirs in the records.

b. The names of the legal heirs of the deceased Budhiya Vesta Patel are shown in the Memo of Appeal by way of amendment in lieu of order dated 13th June,2006 when there is no such order for incorporating the names of the legal heirs of the deceased Budhiya Vesta Patel in the Memo of Appeal and the Consent-Terms. This clearly shows the fraud committed by Yusuf Vali Mohd.Bilakhiya.

c. The Consent Terms are also fraud upon the Court since it has been stated that the legal heirs have been paid total amount of Rs.10,00,000/- in full and final satisfaction of all the claims of the Appellants/Applicants. The said amount has not been received by the Applicants till today.

d. It was stated before the Court that 4 cheques were issued to the legal heirs of the deceased but as they were not found and the copy of the cheques were produced before the Court which is again a fraud upon the Court. In the affidavit of Yusuf Vali Mohd.Bilakhiya it has been stated that the amount of Rs.10,00,000/- was kept ready and is still lying to be paid to the Applicants which is contrary to what they had stated earlier, misleading the Court to believe that the amount was already paid.

e. The Consent-Terms wherein the names of the legal heirs are deliberately shown as Applicants is dated 22nd May,2006 and it is shown that an amount of Rs.1,15,00,000/- has been paid by a Pay Order drawn in favour of M/s.Khaitan and Jaykar Advocates and Solicitors. The pay order is dated 6th June,2006 which is subsequent to the Consent-Terms.

f. The order dated 13th June,2006 has been obtained on the statement made by the counsel and the parties that amicable settlement has been arrived in terms of the Consent Terms which were incorrect and the statements which were false to the knowledge of the Counsel and other Respondents.

g. The legal heirs made a statement in the Civil Application that Yusuf Vali Mohd.Bilakhiya had come to get sign the Consent Terms signed, which was refused and they were threatened and police machinery was used to force them to sign the Consent Terms.

h. The complaint made by the legal heirs of the deceased Budhiya Vesta Patel before the Police opposing any settlement with Yusuf Vali Mohd. Bilakhiya and not intending to sign the Consent Terms, the same was not informed to the Court is itself a fraud upon the Court and therefore the order was obtained under fraud.

i. The names of the legal heirs has been intentionally incorporated in the Memo of Appeal and Consent Terms contrary to the order dated 13th June,2006 only for the purpose of

securing possession of the suit land which was always in the possession of the legal heirs.

6. The learned Counsel for the Applicants further contended that the Consent Terms cannot be made binding upon the legal heirs when they have not been paid the amount of Rs.10,00,000/-. It is also contended that since the legal heirs of the deceased Budhiya Vesta Patel are not party to the Appeal proceedings, the question of any Power of Attorney executed by them or any undertaking given by them does not arise.

7. It is further contended by Mr.Dhakephalkar that there is no finding by any Civil Court that the said Power of Attorney alleged and termed as irrevocable Power of Attorney is coupled with interest and therefore the said Power of Attorney can be cancelled as there are disputes between the legal heirs of the deceased and the said Yusuf Vali Mohd.Bilakhiya.

8. The learned Counsel for the Applicants further states that the Power of Attorney alleged to be irrevocable has been given by Budhiya Vesta Patel to Yusuf Vali Mohd.Bilakhiya only to look after the formalities with the Govt. and B.M.C. since he was uneducated and Yusuf Vali Mohd.Bilakhiya took advantage of his illiteracy and had obtained various signatures on various documents and forged the signature of the wife of Budhiya Vesta Patel and all

this was done for his selfish, malafide and his ulterior motive.

9. It is also submitted that the order dated 13th June,2006 has been passed wherein the Counsel had stated that the names of Respondent Nos.3 to 8 and 10 to 45 be deleted as they are only occupants of various structures and that by deleting their names they would not be prejudiced in any manner as regards their rights and contentions as the Consent Terms have been filed only with regard to the present Appellant.

10. It is further submitted that the Consent-Terms are also fraud upon the Court since in the Consent Terms, it is stated that Yusuf Vali Mohd.Bilakhiya had executed the Power of Attorney in favour of Mohan Deshmukh and Jayshree Deshmukh, nominees of Respondent No.2 M/s.Hitesh Enterprises in lieu of the Power of Attorney executed by the legal heirs of the deceased is not maintainable since the legal heirs are not party to the dispute and are not on record in the Appeal. Furthermore, the Power of Attorney as alleged to have been executed by the legal heirs, wherein it shows Registration fees of Rs.100/- and copying charges of Rs.520/- and therefore the Power of Attorney cannot be said to be coupled with interest and can be revoked at any time.

11. Mr.Dhakephalkar, the learned Counsel for the Applicants lastly contended that a Fraud has been

committed upon the deceased Budhiya Vesta Patel and the legal heirs who belong to Schedule Tribe known as "Dhodhiya Tribe" and the document in terms of certificate has been issued by Sub-Divisional Officer. Any transfer of property of the tribal is subject to provisions of section 36A of the Maharashtra Land Revenue Code,1966 and no sale of occupancy of the land with the tribal can be allowed without previous sanction approval of the Collector and/or State Govt. and in the event of any Agreement contrary to the same, the same would be void and illegal.

12. Mr.Thorat, the learned Senior Counsel for and on behalf of M/s.Hitesh Enterprises, the Respondent No.8 herein, submitted that the owner of the property was Anant Tambe and after the demise of Anant Tambe, his wife Smt.Leelan Anant Tambe had become the owner of the said property. In Suit No.1230 of 1992, which was pending in the High Court, a Consent Term had been filed between M/s.Hitesh Enterprises and Smt.Leelan Tambe, and after passing of a decree and on payment of stamp duty, the said Consent Terms were duly registered with the Sub-Registrar of Assurances, Borivali, and accordingly, M/s.Hitesh Enterprises became absolute owner of the said property.

13. It is further contended that Mrs.Ramkishore Tiwari was the contractual tenant deployed by Anant Tambe, who was cultivating grass since 1954-55. Late Mr.Budhiya Patel was appointed as watchman by

Ramkishore Tiwari for protecting the produce from the land and a kuthca tin shed was provided to him. Mr.Budhiya kept on extending the rooms and now there are 38 rooms in a chawl known as Budhiya Vesta Patel Chawl.

14. It is further contended by Mr.Thorat, the learned Senior Counsel, that in response to the notice given by the Municipal Corporation for Greater Mumbai to Budhiya Vesta Patel for demolishing unauthorised construction which is known as Budhiya Vesta Patel Chawl, he had filed a Long Cause Suit. Mr.Budhiya Vesta Patel had claimed that he was in possession and occupation of the structure admeasuring 20 feet/70 feet for last several years and that he was in possession of the land admeasuring 484 sq.yards. In the present case, he has tried to make out a case that he is in possession of the entire land admeasuring 19627 sq.mtrs., which is totally false as per his own admission in the above referred suit. Subsequently, when Budhiya Vesta Patel tried to get his name entered in the revenue records, the same was not allowed. In short, Budhiya Patel and consequently the Applicants had no right whatsoever in the property or any part thereof.

15. It is pointed out by the learned Senior Counsel Mr.Thorat that on 12th January,1994, a Development Agreement was signed by Budhiya Vesta Patel and Yusuf Vali Mohd.Bilakhiya granting

development rights in favour of Bilakhiya and the consideration for the said Agreement was Rs.2,00,000/- which was fully paid by Bilakhiya to Budhiya. On 17th February,1994, Budhiya Vesta Patel executed an irrevocable Power of Attorney coupled with interest in favour of Yusuf Vali Mohd.Bilakhiya for dealing with and disposing of the property in dispute and the same was duly registered. It appears from the Power of Attorney that the document was being executed pursuant to the Agreement for Sale between the parties. The registered Power of Attorney permits Bilakhiya to sell the property, to declare and affirm all legal and Court documents and pleadings, authorise him to compromise and settle all demands and that it shall not be revoked for 15 years. Thereafter on 15th December,1995, a Deed of Confirmation was also came to be executed and both the documents i.e. Power of Attorney and a Deed of Confirmation were duly registered with the Sub-Registrar of Assurances,Mumbai.

16. It is also pointed out by the learned Senior Counsel Mr.Thorat that on 23rd August,2001 a declaration was signed by Budhiya Patel declaring that he had received full consideration for the sale of his right, title and interest in the property. It further provides that the General Power of Attorney dated 17th February,1994 was coupled with interest within the meaning of the provisions of Section 202 of the Indian Contract Act. It is further pointed out that the

Agreement of Sale dated 12th January,1994, Deed of Confirmation dated 15th December,1995 and the Power of Attorney dated 17th February,1994 were neither cancelled nor revoked and that they were still subsisting. It was further mentioned that all these documents were binding not only on Budhiya Patel but his heirs also.

17. It is contended that Budhiya Vesta Patel had filed a suit against Ramkishore Tiwari claiming ownership through adverse possession. Upon knowing about the filing of suit by Budhiya Patel, M/s.Hitesh Enterprises and Power of Attorney Holder of Anat Tambe the original owners had intervened the suit, as neither Ramkishore Tiwari nor Budhiya Vesta Patel were the owners of the property.

18. Mr.Thorat pointed out that on 9th April,2002, the Court had passed an order in respect of a suit filed by Leelan Tambe, appointing a Court Receiver in respect of the said property. The Court had directed the Court Receiver to ascertain as to who was in possession and directed the City Civil Court to pass an appropriate order based on the report of the Court Receiver. Accordingly, on 22nd August,2002 Budhiya and Bilakhiya were jointly appointed as Agents of the Receiver, and they gave a joint undertaking as required under the law. On 10th November,2003, the suit filed by Budhiya Vesta Patel was dismissed by the City Civil Court and the counter claim filed by

M/s.Hitesh Enterprises was allowed.

19. Ultimately, all the aggrieved parties had filed Appeals, wherein interim order came to be passed ordering existing possession to continue and M/s.Hitesh Enterprises was allowed to put up fencing around the boundary.

20. It is the contention of the learned Senior Counsel Mr.Thorat that Budhiya Vesta Patel has expired on 5th December,2004 at Bombay. Thereafter on 7th January,2005 irrevocable Power of Attorneys were executed by the Applicant in favour of Yusuf Vali Mohd.Bilakhiya. Each of these Powers of Attorney were duly registered with the Sub-Registrar on 23rd/24th February,2005.

21. It appears from these Powers of Attorney that they are pertaining to the property in dispute and that these were pursuant to the earlier Development Agreement. All these Powers of Attorney were coupled with interest in the property which is the subject matter of the dispute. The said Power of Attorneys authorises Yusuf Vali Mohd.Bilakhiya to sell, transfer, raise money, compromise, compound and settle any dispute regarding the said property. On the basis of the Powers of Attorney, Yusuf Vali Mohd.Milakhiya had filed a Civil Application in the month of March,2005 to bring on record the heirs of Budhiya. Accordingly, affidavits have been came to be filed in

support of the Civil Applications filed by the Applicant. From the affidavits, it appears that the Agreement for Development, Deed of Confirmation and the irrevocable Powers of Attorney were supported by valid consideration and requisite stamp duty has been paid on them and the same are duly registered with the Sub Registrar of Assurances,Mumbai and these documents are coupled with interest and the said Powers of attorney are binding on Budhiya Vesta Patel and his heirs. It also appears that they have accepted that Yusuf Vali Mohd.Bilakhiya was the legal representative of Budhiya Patel and was entitled to continue in possession of the property from either the Applicants or anyone else claiming through them. It is also accepted that they had executed an irrevocable Powers of Attorney in favour of Yusuf Vali Mohd.Bilakhiya.

22. It is contended that thus, the Applicants are playing fraud upon the Court in claiming that they were not aware about the proceedings or they have any subsisting vital interest in the matter. Despite the Applicants having no right in the said property, in order to put an end to litigation and commence development work, M/s.Hitesh Enterprises had started negotiations with the heirs of Ramkishore Tiwari and Yusuf Vali Mohd.Bilakhiya being the Power of Attorney holder of heirs of Budhiya Vesta Patel, and accordingly, on 18th April,2006 M/s.Hitesh Enterprise had signed and filed the Consent Terms in the High Court alongwith the heirs of Ramkishore Tiwari and

accordingly had paid an amount of Rs.1,60,00,000/-. Thereafter they had demolished their shed and removed themselves with their equipment from the said property.

23. The learned Senior Counsel Mr.Thorat further pointed out that in first Appeal M/s.Hitesh Enterprise had arrived at a settlement with Yusuf Vali Mohd.Bilakhiya for himself and the heirs of Budhiya Patel for a consideration of Rs.1,25,00,000/-. Thereafter, from the month of May,2006, Yusuf Vali Mohd.Bilakhiya had started insisting M/s.Hitesh Enterprises to sign the Consent-Terms and demanded money within one week, otherwise he would accept money from one Narendra Patel who was willing to pay higher amount and sign an agreement. Thereafter on 22nd May,2006 M/s.Hitesh Enterprises had signed Consent Terms and offered Rs.1,25,000/- to Yusuf Vali Mohd.Bilakhiya and Rs.10,00,000/- to the heirs of Budhiya Vesta Patel apart from 2 tenements of 225 sq.ft. each though as per agreement, they were not entitled for the same. An Amount of Rs.1,00,00,000/- payable to Yusuf Vali Mohd.Bilakhiya was kept in escrow with his Solicitors M/s.Khaitan and Jayakar.

24. It is further contended that on 20th July,2006 the Court Receiver had handed over the vacant and peaceful possession of the entire property of the suit land along with the structure consisting of 38 rooms known as Budhiya Vesta Patel Chawl to M/s.Hitesh

Enterprises. At the time of handing over the possession, out of 38 rooms 12 rooms were vacant and they were locked therefore, the notices were affixed on the vacant rooms, and 5 tenants who were personally present in their rooms received the notices but refused to acknowledge in writing. Consequently, on 3rd August,2006, the present Civil Application has been filed to hand over the possession to M/s.Hitesh Enterprise.

25. It is pointed out by the learned Senior Counsel for the Applicant, that as per the Agreement dated 24th July,2006 between M/s. Hitesh Enterprises and Skyline Construction Co., M/s. Hitesh Enterprises had handed over the possession of the entire property to Skyline Construction Co., as has already been brought on record of the Court.

26. It is further contended, that in the Civil Applications it is claimed, that by filing three police complaints, the Powers of Attorney have been revoked. However, Mr.Thorat pointed out that in any of these three letters it has not been mentioned that the Power of Attorney has been revoked. On the contrary, the Advocate's letter only indicates that the Power of Attorney given to Yusuf Vali Mohd.Bilakhiya by his clients has been withdrawn. In fact, these letters have been issued at the instance of Narendra Patel, a builder who claims to have the Power of Attorney Holder. None of these letters refer

to the Affidavits already signed before the High Court by the Applicants in March, 2005. Thus, none of these letters can amount to revocation of the Power of Attorneys given to Yusuf Vali Mohd.Bilakhiya. The Applicants further state that in any event, the Power of Attorneys were coupled with interest in the property, and therefore they cannot be revoked.

27. Lastly, it is contended by the learned Senior Counsel for the Applicants that the City Civil Court has already categorically held Mr.Budhiya Vesta Patel to be a rank trespasser and the provisions of section 36A of the Maharashtra Land Revenue Code, 1966 are not attracted to such persons. It is also contended that, after the Consent Terms were filed, the Applicants, through one Narendra Patel have been using high handed and threatening methods against them.

28. The Respondent Nos.7 & 8 have filed their further additional written statement and contended through Mr.Thorat, the learned Senior Counsel that Mr.Budhiya Vesta Patel had himself claimed ownership by adverse possession and in an earlier suit he had claimed to be in possession of an area admeasuring only 400 sq.yards. Mr.Budhiya Vesta Patel had executed an Agreement dated 12th February,1994 in favour of Yusuf Vali Mohd.Bilakhiya which was duly registered in the office of Sub Registrar of Assurances, Borivali, Mumbai. The said Agreement proved that whatever rights deceased Budhiya Patel had

in respect of the suit land (which were in fact only as an encroacher) had been completely transferred in favour of Yusuf Vali Mohd.Bilakhiya for consideration of Rs.2,00,000/-. It is further submitted that alongwith the said Agreement an irrevocable Power of Attorney dated 17th February,1994 was also executed by the deceased Budhiya Vesta Patel in favour of Yusuf Vali Mohd.Bilakhiya. It authorizes the Agent to negotiate for sale of the said land, to execute necessary agreements, documents and writings pertaining thereto and appropriate the sale proceeds thereof. The Power of Attorney is irrevocable, as it has been executed for consideration and therefore the provisions of section 202 of the Indian Contract Act would be applicable.

29. It is contended that Mr.Budhiya Patel had executed a Deed of Confirmation and the same was duly registered. He had also executed a Declaration dated 23rd August,2001 declaring that he had received the entire consideration of Rs.2,00,000/-, according to the statement of Mr.Budhiya Patel.

30. It is further submitted in the written submission that even after the Decree was passed in the City Civil Court, when Appeals were filed, Budhiya Vesta Patel was represented by Yusuf Vali Mohd.Bilakhiya. The Applicants had nowhere challenged the execution of the document and in fact the receipt of entire consideration by Budhiya Vesta Patel during

his lifetime has been expressly admitted by them in their individual capacity and also in their irrevocable Power of Attorney executed by them in favour of Yusuf Vali Mohd.Bilakhiya.

31. Mr.Thorat submitted that the allegations of fraud alleged to have been played by these Respondents on the Court are unsubstantiated, as they believed that Yusuf Vali Mohd.Bilakhiya was duly Constituted Attorney of Budhiya Vesta Patel and of the Applicants with all rights to enter into a compromise for and on their behalf, sign the Consent Terms and receive consideration under the Consent Terms. It is contended in the written submission filed by the Applicants that these Respondents were aware about the alleged inter-se dispute between Yusuf Vali Mohd.Bilakhiya and the Applicants. However, since these Respondents had not dealt with the Applicants and had only negotiated with Yusuf Vali Mohd.Bilakhiya, there was no occasion for these Respondents to be aware about the dispute. By way of abundant precaution, during negotiations in the Month of May,2006 with Yusuf Vali Mohd.Bilakhiya it was agreed to keep the amount of Rs.70,00,000/- in escrow with his Solicitor, which was thereafter revised to Rs.1,25,00,000/-.

32. It is further submitted by Mr.Thorat that the Applicants were in possession of only two rooms from the old chawl on the suit land and to that extent the

Consent Terms provide for sufficient safeguard wherein the Applicants would be entitled to get accommodation after the development of land. The recitals in the Irrevocable Power of Attorney executed by the Applicants in favour of Yusuf Vali Mohd.Bilakhiya also falsify the claim of the Applicants of being in cultivating possession of the suit land.

33. The allegations regarding alleged fraud in relation to the payment of Rs.10,00,000/- to the Applicants is concerned, it was submitted by Mr.Thorat that the same is a matter between the Applicants and Yusuf Vali Mohd.Bilakhiya and these Respondents have complied with other obligations of handing over the pay order of Rs 10,00,000/-.

34. It is submitted by the Respondents that the names of Respondents No.3 to 8 and 10 to 45 were rightly deleted for the following reasons:

a. The Respondent Nos.3 to 8 were members of Tiwari Family with whom these Respondents had already entered into an amicable settlement.

b. The Respondent Nos.10 to 45 were original defendants in the counter claim filed by these Respondents in the City Civil Court which was decreed. None of these Respondents had filed any Appeal for challenging the said Decree for eviction. In fact, many of them arrived at an out of court settlement with these Respondents to the effect that they would be provided permanent accommodation. Hence the written submission of the Applicants that fraud has been played on the Court by deleting Respondents No.3 to 8 and 10 to 45 does not deserve to be accepted.

35. In view of the joint undertaking executed by

Budhiya Vesta Patel and Yusuf Vali Mohd.Bilakhiya on account of which they had been put in possession as the Agents of the Court Receiver, it is impermissible for the Applicants to contend that Budhiya Patel continued to be in possession in his individual independent right or to contend that the possession was not with the Court Receiver.

36. The allegation of violation of section 36A of the Maharashtra Land Revenue Code, 1966 is without any substance for the following reasons:

a. Budhiya Vesta Patel had claimed to have acquired ownership of the suit land by adverse possession. Section 36A of the M.L.R. Code, 1966 prohibits transfer of "occupancy" of a tribal in favour of a non tribal. Merely because a person who is a tribal is in possession of some land, provisions of section 36A of the code do not ipso facto apply. Budhiya Vesta Patel could never be an "occupant" within the meaning of section 2(23) read with section 2(12) of the M.L.R. code, 1966.

Section 2(23) "Occupant" means a holder in actual possession of unalienated land, other than a tenant or government lessee; provided that, where a holder in actual possession is a tenant, the land holder or the superior landlord, as the case may be, shall be deemed to be the occupant.

Section 2(12) "to hold land" or "to be a landholder or holder of land" means to be lawfully in possession of land whether such possession is actual or not.

b. The expression land belonging to tribal connotes the land which is lawfully owned by the tribal. In other words it means that a valid title of the said land vests in the tribal. The tribal must be the legal title holder of such land.

c. The claim of Budhiya Vesta Patel of being a member of the Scheduled Tribe is itself seriously disputed and there is nothing to indicate that such claim or tribe certificate

had been validated by the Scrutiny Committee.

d. The consent terms do not amount to any transfer of ownership by heirs of Budhiya Vesta Patel within the meaning of section 36A of M.L.R. Code, 1966. The City Civil Court, Mumbai has already rejected the claim of Budhiya Vesta Patel of having become the owner by adverse possession. The said Decree was challenged in an Appeal. The acceptance of the said Decree subject to the conditions in the consent terms can never amount to transfer of occupancy of a tribal.

37. Mr.Seervai, the learned Senior Counsel, appearing on behalf of Yusuf Bilakhiya, the Respondent No.9, adopted all the arguments of Mr.Thorat, the learned Senior Counsel, as mentioned hereinabove, as such the same are not repeated again.

38. Over and above, Mr.Seervai, the learned Senior Counsel for Respondent No.9, made the following submissions:-

39. It is primarily contended against Mr.Bilakhiya that a fraud has been played upon the Court by adding the names of the heirs of the deceased Budhiya Vesta Patel when there was no application for the heirs to be brought on record.

40. It is also contended by Mr.Seervai that an amount of Rs.1,15,00,000/- has been paid by Pay Order dated 6th June,2006 drawn in favour of M/s.Khaitan & Jayakar, Advocates & Solicitors which Pay Order is subsequent to the date of the Consent-Terms viz.22nd of May,2006 and hence there could not be any mention of any date subsequent to the date of the

Consent-Terms, which it is alleged, proves that the Consent Terms is fraudulent and cannot be believed. It has been further contended that since the sum of Rs.1,15,00,000/- was not paid to Mr.Bilakhiya and was to be kept in escrow for the period of eight months from the date of the Consent-Terms, it was contended that there was a dispute between the legal heirs of Mr.Budhiya Vesta Patel and which dispute was not informed to the Court which was itself a fraud upon the Court.

41. It is submitted by Mr.Seervai on behalf of Mr.Bilakhiya that the said contention that, a fraud was played upon the Court by adding the names of the heirs of the deceased Budhiya Vesta Patel when no application for the heirs to be brought on record was made, has not been raised as a contention in the Civil Application as filed by the Applicants. It is further submitted on behalf of Mr.Bilakhiya that, as already argued that, Mr.Bilakhiya did not only have an Irrevocable Power of Attorney from the deceased Mr.Budhiya Vesta Patel but that each of the heirs of Mr.Budhiya Vesta Patel had not only given a declaration but had also executed a General Irrevocable Power of Attorney in favour of Mr.Bilakhiya all of which had been registered. Mr.Bilakhiya had acted under the registered Powers of Attorney which inter alia entitled him to make all applications to be filed in any Court and also to settle, adjust and/or compound any proceeding or

proceedings in such manner as Mr.Bilakhiya deems fit. The names of the heirs of the deceased were added as they had specifically authorized Mr.Bilakhiya to do so. In the peculiar facts and circumstances of the case and in view of all the documents executed by the deceased Mr.Budhiya Vesta Patel and his heirs has already filed before this Hon'ble Court it was clear that all facts and documents were disclosed to the court and there was no question of any fraud having been perpetrated by Mr.Bilakhiya on the Court. In any case once it is established that Mr.Bilakhiya had subsisting Power of Attorney's from the heirs of the deceased Mr.Budhiya Vesta Patel, no question of fraud would arise as such.

42. As far as the contention relating to the amount of Rs.1,15,00,000/- having been paid to Advocates of Mr.Bilakhiya subsequent to the date of the Consent-Terms, it has been clearly mentioned that the Consent-Terms were signed on the 22nd of May,2006 and where sought to be moved during the vacations but since the same was not permitted, the same Consent-Terms were then filed upon the re-opening and orders accordingly were passed by this Hon'ble Court on 13th of June,2006. The amount of Rs.1,15,00,000/- therefore was paid on the 13th of June,2006 being the date when the order was passed by this Hon'ble Court.

43. It is further contended that surprisingly the Applicants have not dealt with at all the registered

documents executed by each of them which includes the declaration as well as the Irrevocable Power of Attorney as well as the Affidavit filed in First Appeal No.1390 of 2003 which clearly prove that having executed documents there was now an attempt made by the Applicants by preferring the Civil Application to resile out of the binding and registered documents.

44. In view of what is stated hereinabove, Mr.Seervai therefore contended that, the question of any order being passed on the Civil Applications do not arise as the same are totally devoid of any merits and require to be dismissed.

45. After having heard all the learned Senior Counsel and the learned Counsel in the above, certain facts are very clear i.e. as submitted by Mr.Thorat, the learned Senior Counsel for M/s.Hitesh Enterprises, the Respondent No.8 had become the owner of the property after the demise of Anant Tambe certain consent terms were entered into with his wife Smt.Lilan Anant Tambe in Suit No.1230 of 1992 in this Court and in pursuance of the aforesaid consent terms, a decree was passed and accordingly stamp duty appears to have been paid and the same is duly registered with the Sub-Registrar, Borivali, whereby M/s.Hitesh Enterprises appears to have become absolute owner. It is also apparent that one Ramkishore Tiwari who was cultivating grass on the said plot since 1954-55 and Budhiya Vesta Patel who was appointed as Watchman by

the said Tiwari for protecting the produce from the land and a kaccha tin shed was provided to the said Budhiya Vesta Patel. It is also apparent from the record that the said Budhiya Vesta Patel extended one small tin shed into various rooms, amounting to 38 rooms known as Budhiya Patel Chawl. The Municipal Corporation for Greater Mumbai had demolished the unauthorised Budhiya Patel Chawl and the said Budhiya Patel had filed a Long Cause Suit challenging the same and he had also claimed that he was in possession of entire land admeasuring 19627 sq.mtrs. Thereafter, it appears that on 12th January,1994 a Development Agreement was signed between Budhiya Vesta Patel and Yusuf Vali Mohd.Bilakhiya for a consideration of Rs.2,00,000/-, which was fully paid by Yusuf Vali Mohd.Bilakhiya to Budhiya Vesta Patel. Thereafter on 17th February,1994 Budhiya Vesta Patel executed an irrevocable Power of Attorney coupled with interest in favour of Yusuf Vali Mohd.Bilakhiya for dealing with and disposing of the property and the said Power of Attorney was also duly registered with the Sub Registrar. Thereafter on 15th December,1995 a Deed of Confirmation also came to be executed wherein both Power of Attorney and Deed of Confirmation was also duly registered with the Sub Registrar of Assurances. On 23rd August,2001 the said Budhiya Patel filed a Declaration, declaring that he had received full consideration for the sale of right, title and interest of the property. Mr.Thorat, the learned Senior Counsel had pointed out that admittedly, the

said Powers of Attorney could not be terminated in the light of Section 202 of the Indian Contract Act and the same also have not been terminated.

46. There is no dispute that the Development Agreement dated 12th January,1994, Power of Attorney Dated 17th February,1994 Deed of Confirmation dated 15th December,1995 have neither been cancelled nor revoked and they are all subsisting. In the aforesaid documents, it is also clearly mentioned that the aforesaid documents are not only binding on Budhiya Vesta Patel but also on his legal heirs.

47. Mr.Thorat, the learned Senior Counsel had pointed out that Budhiya Vesta Patel had filed a suit against the aforesaid Tiwari claiming ownership through adverse possession. After coming to know about the said suit, M/s.Hitesh Enterprises had intervened the said suit to contend that neither Mr.Ramkishore Tiwari nor Budhiya Vesta Patel were owners of the said property. In the said suit on 9th April,2002, the Court had passed an order of appointment of Court Commissioner in respect of the said property to ascertain as to who was in possession and on 22nd August,2002 both the Budhiya Vesta Patel and Yusuf Vali Mohd.Bilakhiya were jointed appointed as Agents of the Court Receiver and both have given a joint undertaking. Finally, it appears that the aforesaid suit filed by Budhiya Vesta Patel was dismissed by the City Civil Court and the Counter

Claim filed by M/s.Hitesh Enterprises was allowed.

48. Aggrieved thereby, the present First Appeal has been filed wherein, interim reliefs were granted directing existing position to continue and M/s.Hitesh Enterprises were permitted to put fencing around the boundary of the said property. It appears that thereafter on 5th December,2004 Budhiya Vesta Patel has expired at Mumbai. On 7th January,2005, irrecoverable Powers of Attorney were executed by the legal heirs of Budhiya Vesta Patel in favour of Yusuf Vali Mohd.Bilakhiya and even these Powers of Attorney executed by the Applicants' heirs were duly registered with the Sub Registrar on 23/24th February,2005. It is vital to note that these Powers of Attorney coupled with interest in the property which is the subject matter of the dispute and the said Powers of Attorney clearly authorise Yusuf Vali Mohd.Bilakhiya to sell, transfer, raise money, compromise, compound and settle any dispute regarding the said property.

49. On the basis of these Powers of Attorney Yusuf Vali Mohd.Bilakhiya had filed Civil Applications in the month of March,2005 to bring the legal heirs of Budhiya Vesta Patel on record. Ultimately, by my order dated 13th June,2006, the legal heirs were allowed to be brought on record. It is vital to note here that the legal heirs are represented by the Powers of Attorney Holder of Yusuf Vali Mohd.Bilakhiya. On the very same day, the aforesaid

Appeals were disposed of in terms of the consent terms, which have been impugned by the present Applicants by these Civil Applications.

50. Mr.Dhakephalkar has fairly conceded that the Applicants had not revoked their Powers of Attorney of Budhiya Vesta Patel. His only contention was that the Applicants had filed certain police complaints, hence it ought to be construed that the Applicants had revoked their Powers of Attorney. There is no dispute that the Power of Attorney coupled with interest executed by Budhiya Vesta Patel and subsequently after his death, the Powers of Attorney coupled with interest executed by the Applicants as the legal heirs in favour of the said Yusuf Vali Mohd.Bilakhiya are also registered with the Sub Registrar and the same continued to be so.

51. In the light of the above, I am clearly of the view that by virtue of the Sections 202 of the Indian Contract Act, the aforesaid irrevocable Powers of Attorney will have to be given full effect to and the same cannot be treated as revoked and over and above, one cannot forget that there is also an execution of declaration in favour of Yusuf Vali Mohd.Bilakhiya. It is also vital to note that the said Budhiya Vesta Patel has categorically declared that he has already received the entire consideration and that he has no right, title or interest in the said property. If that be so, the Applicants being his heirs have no

better right or interest.

52. As far as the complaint with regard to the non payment of Rs.10,00,000/- to the Applicants, it is apparent that the applicants, who were tendered the said amount but they had declined to collect the same and the learned Counsel appearing on behalf of Mr.Budhiya Vesta Patel had made it clear that he is still ready and willing to pay the said amount of Rs.10,00,000/- to the Applicant. In view thereof, I direct Yusuf Vali Mohd.Bilakhiya to deposit a sum of Rs.10,00,000/- with the Registrar General of this Court within two weeks to enable the Applicants to withdraw the same and the same is permitted to be withdrawn by the Applicants.

53. As far as the objection with regard to the contention that the transactions are violative of Section 36(a) of the Maharashtra Land Revenue Code, the same is totally unsustainable for the following reasons;

a. Budhiya Vesta Patel had claimed to have acquired ownership of the suit land by adverse possession. Section 36A of the M.L.R. Code, 1966 prohibits transfer of "occupancy" of a tribal in favour of a non tribal. Merely because a person who is a tribal is in possession of some land, provisions of section 36A of the code do not ipso facto apply. Budhiya Vesta Patel could never be an "occupant" within the meaning of section 2(23) read with section 2(12) of the M.L.R. code, 1966.

Section 2(23) "Occupant" means a holder in actual possession of unalienated land, other than a tenant or government lessee; provided that, where a holder in actual possession is a tenant, the land holder or the superior

landlord, as the case may be, shall be deemed to be the occupant.

Section 2(12) "to hold land" or "to be a landholder or holder of land" means to be lawfully in possession of land whether such possession is actual or not.

b. The expression land belonging to tribal connotes the land which is lawfully owned by the tribal. In other words it means that a valid title of the said land vests in the tribal. The tribal must be the legal title holder of such land.

c. The claim of Budhiya Vesta Patel of being a member of the Scheduled Tribe is itself seriously disputed and there is nothing to indicate that such claim or tribe certificate had been validated by the Scrutiny Committee.

d. The consent terms do not amount to any transfer of ownership by heirs of Budhiya Vesta Patel within the meaning of section 36A of M.L.R. Code, 1966. The City Civil Court, Mumbai has already rejected the claim of Budhiya Vesta Patel of having become the owner by adverse possession. The said Decree was challenged in an Appeal. The acceptance of the said Decree subject to the conditions in the consent terms can never amount to transfer of occupancy of a tribal.

54. As far as the discrepancies in the date of the pay order, it is apparent that the original Pay Order had been prepared and as the Court had declined to entertain in filing Consent Terms during the vacation of May,2006, the same was postponed and finally, the said Application was moved after vacation on 13th June,2006, in view thereof a fresh pay order was prepared and hence there is no discrepancy to find fault with Yusuf Vali Mohd.Bilakhiya.

55. Mr.Dhakephalkar had very strongly sought to contend that Mr.Yusuf Vali Mohd.Bilakhiya by bringing the names of legal heirs on record instead of his name pursuant to an order dated 13th June,2006 amounts to a

fraud cannot be at all sustained since admittedly, Mr.Yusuf Vali Mohd.Bilakhiya is the valid holder of Power of Attorney of each of the Applicant, who is the legal heir of the deceased Budhiya Vesta Patel and when the relief was granted, he was acting on behalf of the said legal heirs and accordingly, he had rightly incorporated the names of legal heirs on their behalf and no fault can be found with regard to the same.

56. It may also be noted that a joint undertaking was executed by Budhiya Vesta Patel and Yusuf Vali Mohd.Bilakhiya when they were put in possession as Agents of the Court Receiver. Hence, Budhiya Vesta Patel did not have any independent or individual right.

57. Under the aforesaid facts and circumstances of the case, the aforesaid Applications have absolutely no substance, the same are devoid of merits. Hence, the same stand dismissed with costs.

58. After the above order was pronounced, the learned Counsel appearing on behalf of the Applicants prayed that the ad-interim-relief granted by this Court on 17th August,2006 be continued for a period of four weeks. The learned Counsel appearing on behalf of the Respondents opposed for the same.

59. Having regard to the facts and circumstances of the case, I am inclined to continue ad-interim-relief granted on 17th August,2006. Accordingly, ad-interim-relief granted on 17th August,2006 i.e. "parties to maintain status-quo regarding possession as of today" be continued for a period of four weeks from today.

**(DR.S.RADHAKRISHNAN,J.)**